

DECLARATION OF LAWRENCE E. HELLER

I, LAWRENCE E. HELLER, declare as follows:

1. I am an attorney at law duly licensed to practice before all of the courts in the State of California. I am the attorney principally responsible for the representation of both Bridge Publications, Inc. and Author Services, Inc. in this action. The following testimony is of my personal knowledge and I am available and competent to personally testify thereto.

2. I have read the Declaration of Gerald Armstrong which is attached as Exhibit "E" to the moving papers herein. Of the fifty-four (54) paragraphs in that twenty-four (24) page declaration, there are but two (2) paragraphs wherein Armstrong testifies about conversations between the two of us: paragraphs 4 and 7. Accordingly, this declaration will only address those two (2) paragraphs in that it is my belief that the remainder of the declaration is patently irrelevant to the instant Motion. Also, I have little or no knowledge concerning the remaining parts of that declaration other than to state that, to my knowledge, there is nothing in Armstrong's settlement agreement that prevents Scientology from providing written responses to any adverse publicity written about it.

3. It should initially be noted that I have never litigated against Ronald DeWolf. So, I do not believe I ever maintained an adversarial relationship with Mr. DeWolf.

4. In December of 1986, plaintiff Church of Scientology entered into a settlement agreement with, among others, Gerald Armstrong. Mr. Armstrong's settlement was part of a global settlement of cases against the Church of Scientology and others,

1 being litigated by Boston, Massachusetts attorney, Michael J. Flynn.
2 I was the attorney principally responsible for effecting that global
3 settlement. The settlements concerned well over a dozen plaintiff
4 litigants as well as various Church of Scientology entities and
5 other third parties sued as defendants. Those settlements also
6 concerned ASI, a defendant in this matter, which was a co-defendant
7 in only one of those many actions. Those settlement negotiations
8 transpired over the course of several months, ultimately culminating
9 in a multi-week session in a hotel in the City of Los Angeles, where
10 most of the lawyers, and most of the parties, involved in the
11 litigation met extensively. The lawsuits underlying those settle-
12 ments had been vociferously litigated for many years.

13 5. Settlement negotiations were both arduous and difficult.
14 However, settlements were ultimately entered into between the
15 numerous parties. The settlements provided for the non-disclosure
16 of facts underlying the various litigation involved, as well as,
17 and most importantly, non-disclosure of the terms of the settle-
18 ments themselves.

19 6. In October of 1989 I was informed by Toby Plevin, counsel
20 for CORYDON, that Mr. Armstrong had been served with a deposition
21 subpena in the CORYDON case. I thereafter received notice of Mr.
22 Armstrong's deposition with an accompanying subpena duces tecum
23 which sought only documents relating to Mr. Armstrong's settlement
24 agreement and which, in my opinion, did not relate in the least to
25 the issues involved in this litigation. (Attached hereto as
26 Exhibit "1"). At that time I called attorney Michael Flynn in
27 Boston to inquire as to what Armstrong's intentions were with regard
28 to testifying about his settlement agreement. I phoned Mr. Flynn

1 because it was my understanding that Mr. Flynn at that time still
2 represented Mr. Armstrong as he had during the settlement negotia-
3 tions. Mr. Flynn told me that I should speak directly with Mr.
4 Armstrong on the subject and further informed me that he would
5 arrange for me to speak with Mr. Armstrong. Mr. Flynn called me
6 back shortly thereafter and informed me that he had secured Mr.
7 Armstrong's permission for me to speak with him and that Mr.
8 Armstrong was expecting my phone call.

9 7. It should be noted at the outset that had the Armstrong
10 subpoena not demanded production of the settlement documents from
11 Armstrong I would not have called Mr. Flynn.

12 8. Shortly thereafter, (it may well have been on October 23,
13 1989 as Mr. Armstrong testifies in paragraph 4 of his declaration),
14 I telephoned Mr. Armstrong and asked him essentially the same
15 question I had asked Mr. Flynn. I informed Mr. Armstrong that I
16 understood that he had been subpoenaed to testify in Mr. CORYDON's
17 case. I further explained to him that I understood that he was
18 compelled to honor the subpoena but that he would likely be asked a
19 lot of questions respecting the settlement in view of the fact that
20 he had been served with a subpoena duces tecum requesting nothing but
21 his settlement documents. As Mr. Armstrong states in paragraph 4
22 his declaration, I thereafter asked if he planned to have an
23 attorney representing him at his deposition and if it would be Mr.
24 Flynn. He said he did not have an attorney. I asked him if he would
25 like assistance in obtaining counsel to attend the deposition on
26 his behalf to protect him during that deposition. At no time do I
27 recall offering to pay for his attorney. I don't believe the
28 subject even came up.

1 9. Mr. Armstrong, after a short time, indicated that he was
2 uninterested in discussing the matter with me and that he would
3 personally make the determination as to what questions were
4 relevant, and what questions he would answer at his deposition
5 without my assistance. I responded that even though I recognized
6 that he had to testify pursuant to the subpoena with which he was
7 served, that if he did indeed freely answer questions relating to
8 his settlement agreement, he may well be in breach of that agreement
9 and that, accordingly, it was within his best interest to find
10 counsel to protect him. After I made that statement, I recall Mr.
11 Armstrong saying to me that he would think about it and, if he
12 changed his mind, he would get back to me. (Mr. Armstrong also told
13 me he believed Scientology had already breached his settlement
14 agreement but I don't recall him specifying in what manner that
15 breach occurred).

16 10. I did, during the course of that conversation, suggest
17 to Mr. Armstrong that his best course of action would probably be
18 to have an attorney represent him and to have that attorney instruct
19 him to refuse to answer questions respecting the settlement
20 agreement unless compelled to do so by this Court through a
21 subsequent motion. I did not, and do not now, consider that
22 suggestion improper. As Mr. Armstrong truthfully testifies, I did
23 tell him that he had been paid a considerable amount of money and,
24 accordingly, had a contractual obligation not to divulge informa-
25 tion respecting the settlement. As Mr. Armstrong again truthfully
26 testified in his declaration, I did inform him that I felt that he
27 was sort of stuck between his duty to honor both the subpoena and
28 his settlement agreement and that the safest position he could take

1 was to have an attorney protect his interests as detailed hereinab-
2 ove. At no time did I threaten him with a lawsuit, speak to him
3 in a threatening or intimidating manner or even mention a lawsuit
4 The Court should note Armstrong never says I threatened him with
5 litigation in his declaration.

6 11. However, to my recollection, all of this took place
7 during the course of one (1) telephone conversation. I do not
8 recall him calling me back as he testifies to doing in his declara-
9 tion.

10 12. At paragraph 10 of his March 15, 1990 declaration, Mr.
11 Armstrong sets forth what he purports to be a section of the
12 Armstrong Settlement Agreement concerning the duties of confiden-
13 tiality owed by Mr. Armstrong. Mr. Armstrong then goes on through
14 the majority of the balance of his March 15th declaration to allege
15 that the Church of Scientology of California has violated reciprocal
16 duties of confidentiality by commenting upon, in other litigation,
17 testimony and facts concerning Mr. Armstrong and his experiences
18 within the Church of Scientology.

19 13. The confidentiality provisions of the Armstrong Settlement
20 Agreement are nor reciprocal in nature. Mr. Armstrong does have
21 duties of confidentiality under the terms of the Armstrong settle-
22 ment and paragraPg 10 appears to be an accurate recitation of those
23 duties. However, there are no reciprocal duties of confidentiality
24 under the terms of the Armstrong Settlement Agreement that apply to
25 any of the Church parties in the settlement.

26 14. An important part of the Armstrong settlement was that
27 the Church was not bound by the same confidentiality provisions as
28 Armstrong and that the Church parties remain free to comment upon

1 and use information pertaining to Mr. Armstrong's experiences in the
2 Church of Scientology. At the time of the Armstrong settlement,
3 information from Mr. Armstrong was being used in a number of cases
4 around the world. It was important to the Church parties to the
5 Armstrong settlement that they remain free to defend themselves
6 against allegations supported by information originating from
7 Armstrong prior to the settlement. I discussed this aspect of the
8 confidentiality provisions the settlement agreement with Armstrong's
9 counsel, Michael J. Flynn, during my settlement negotiations with
10 him in 1986 and it was clearly understood by both sides of the
11 negotiations that the confidentiality provisions were not to be
12 reciprocal. Any assertions to the contrary now being made by
13 Amrstrong are false.

14 15. Turning to a related matter, during the course of Mr.
15 Schomer's deposition, Attorney Plevin indicated on the record that
16 I had in some fashion "coached" Schomer with regard to his responses
17 to certain questions. Ms. Plevin said on the record of that
18 deposition to Mr. Schomer, prior to asking him a question: "Now
19 that Mr. Heller has told you what you can or cannot remember . . ."
20 (see pg. 118 of Schomer deposition attached to the Points and
21 Authorities as part of Exhibit "B").

22 16. After reviewing Schomer's deposition transcript, I
23 directed correspondence to Ms. Plevin dated March 15, 1990 (Exhibit
24 "2" to this Declaration.) wherein I demanded a retraction of her
25 statement quoted above arguing she had no basis for it. Ms. Plevin
26 replied to that letter through return correspondence dated March
27 16, 1990, wherein she said, "However, my comment on page 118 of the
28 transcription was an expression of annoyance, not a statement of

1 fact. I apologize". (see Plevin correspondence dated March 16,
2 1990 attached hereto as Exhibit "3"; emphasis added).

3 17. In my March 15th letter, I also expressed my concern at
4 the three (3) hours of questioning Schomer was subjected to during
5 his deposition concerning my representation of him. My March 15th
6 letter further stated on page 2 thereof that I protested as improper
7 and unsupported Ms. Plevin's statement on the record of that
8 deposition directed to me that: ". . . on your client's behalf you
9 are attempting to frighten Mr. Schomer with potential lawsuits
10 arising out of confidentiality agreements in the settlement your
11 clients reached with Mr. Schomer which required him to avoid service
12 of process and to create other difficulties with respect to
13 testimony adverse to Scientology".

14 18. In response to being called upon to explain that comment,
15 Ms. Plevin stated in her return correspondence of March 16th that
16 her statement accusing me of trying to frighten Schomer with the
17 threat of litigation was made by her as a prelude: ". . . to
18 elicit testimony to establish exceptions to the attorney-client
19 privilege. In that context I stated that it was my intention to
20 establish that Mr. Schomer has been influenced to have you represent
21 him. The testimony was that you had not frightened him. You cannot
22 contend that an attorney's statement of purpose for a line of
23 questions is the equivalent of a statement of fact." (see page 2
24 of Plevin letter attached hereto as Exhibit "3"; emphasis added).

25 19. It would appear Ms. Plevin radically changed her position
26 in the three (3) days that transpired between the time she wrote
27 her correspondence to me on March 16, 1990 and the point in time
28 that she filed the instant Motion on March 19, 1990.

20. Ms. Plevin's Motion is a bad faith attempt to poison this Court against defendants and their counsel without any basis whatsoever. As prayed in this Opposition, sanctions must be awarded. I have spent 19.2 hours preparing this Opposition and project another three (3) hours of travel and court time to argue this Motion. My hourly rate is \$210.00 per hour. I therefore request sanctions in the sum of \$4662.00.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th day of March 1989, at Beverly Hills,
California.

Lawrence E. Heller
Declarant